dependent upon him." This is the view adopted in a number of the States. *Hatch* v. *Mut. Life Ins. Co.,* 120 Mass. 550; *Breasted* v. *Far. Loan & Trust Co.,* 8 N. Y. 299, 59 Am. Dec. 482; *Mooney* v. *Ancient Order,* 24 Ky. L. Rep. 1787, 72 S. W. 288; *Supreme Commandery Knights of Golden Rule* v. *Ainsworth,* 71 Ala. 436, 46 Am. Rep. 332; and is the general rule in England; *Amicable Society* v. *Bolland,* 4 Bligh. (N. S.) 194; *Borradaile* v. *Hunter,* 5 Man. & G. 639; *Clift* v. *Schwabe,* 3 C. B. 437. A dissenting opinion in the principal case is based on the theory that the provision of the GEORGIA CODE, 1910, § 2500, renders the latter view obligatory upon the Georgia court.

JUDGMENT—COLLATERAL ATTACK ON JUDGMENT OF PROBATE COURT.—On a bill by a guardian of an incompetent, praying sale and partition of lands, defendant demurred on the ground that the adjudication of incompetency and the appointment of complainant were void because the record showed that the finding of insanity was by a jury of less than the statutory number. *Held,* the demurrer was properly overruled, for the reason that an inquisition by an agreed jury of ten was merely an irregularity, and did not render the appointment subject to collateral attack. *Powell* v. *Union Bank & Trust Co.* (Ala. 1911) 56 South. 123.

By the weight of authority in this country the judgments of a probate court cannot be attacked in a collateral proceeding. GARY'S PROBATE LAW, § 23, p. 12, and cases cited; *Dayton* v. *Mintzer,* 22 Minn. 393; *Tebbets* v. *Tilton,* 24 N. H. 120; *Dodge* v. *Cole,* 97 Ill. 338; and *Craft* v. *Simon,* 118 Ala. 625. On collateral attack the court presumes that the court in the former case acted correctly and with due authority, and its record is valid as to all jurisdictional facts appearing of record. *Crown Real Estate Co.* v. *Rogers,* 132 Ky. 790. Records of probate courts import absolute verity and are not subject to collateral attack, *Heckman* v. *Adams,* 50 Ohio St. 305. An order appointing a guardian of an incompetent in the absence of direct attack is presumed to have been correctly made. *Isaacs* v. *Jones,* 121 Cal. 257. The general rule is that juries must consist of twelve men, and such fact must appear of record, and when a record shows that a cause was tried by a jury of less than twelve men the trial will be held to be a nullity. THOMPSON AND MERRIAM, JURIES, §§ 5 and 6, and cases cited. On the number of jurors see also 5 BACON'S ABRIDGMENT, p. 314, title Juries A; and 2 HALE, PLEAS OF THE CROWN, p. 161. Where the record recites a jury of twelve, a court of appeal will presume that there were twelve men though only eleven names appear. *Foote* v. *Lawrence,* 1 Stew. 483. Though the main case conflicts with many adjudicated cases in regard to the number of jurors, and no case exactly in point has been found, it is believed that the case follows the better rule in holding judgments not subject to collateral attack for mere irregularities in procedure. See 1 MICH. L. REV. 645.

MINES AND MINERALS—OWNERSHIP—ESTATE IN UNDISCOVERED MINERALS.—Complainant was the holder of a tax title on certain lands originally owned in fee by X and Y, who had conveyed said lands by a quit-claim deed containing an exception and reservation of all metals or ores in, upon or under

said lands. Complainant had served the statutory tax notice upon the holders of the title conveyed by the quit-claim deed, but had not served the notice upon the holders of the estate reserved. Complainant asked for a decree in chancery quieting title in him. Defendant contended that complainant had failed to give the statutory tax notice required by Act No. 229 of the PUBLIC ACTS 1897, and tendered complainant the amount paid by him for taxes, together with the statutory premiums and charges, and prayed for a reconveyance from complainant. Said Act requires service of notice to be made "upon the grantee or grantees under the last recorded deed in the regular chain of title, and the mortgagee or mortgagees named in all undischarged mortgages or any assignee thereof of record." The record contained no evidence whether or not minerals actually underlay the lands in question. Complainant contended that the words "grantee or grantees under the last recorded deed in the regular chain of title" could not be so construed as to compel service upon the grantors in the quit-claim deed containing the reservation. *Held*, that ownership of undiscovered minerals constitutes an estate in land, and that as to the estate reserved, the grantors in that deed remain grantees under the prior recorded conveyance to them until they convey, and as such are entitled to the statutory notice. *Hansen* v. *Hall, et al.* (Mich. 1911), 132 N. W. 457

The owner of land containing minerals may segregate one from the other by a conveyance or instrument in writing so that there is a complete severance of title, and separate estates are created. 27 CYC. 681; *Brand* v. *Consolidated Coal Co.*, 219 Ill. 543, 76 N. E. 849; *Adam et al.* v. *The Briggs Iron Co.*, 7 Cush. 361, 366, 367; *Caldwell* v. *Fulton*, 31 Pa. St. 475, 483; *Interstate Coal Co.* v. *Clintwood, etc. Co.*, 105 Va. 574, 54 S. E. 593. The severance may be accomplished either by conveyance of the land with an express reservation of the minerals, or by a conveyance of the minerals or mining rights. 27 CYC. 682; *Kincaid* v. *McGowan*, 88 Ky. 91, 4 S. W. 802, 804, 9 Ky. L. Rep. 987, 13 L. R. A. 289; *Gordon* v. *Park*, 219 Mo. 613, 117 S. W. 1163; *Wardell* v. *Watson*, 93 Mo. 107, 5 S. W. 605; *Erickson* v. *Mich. Land & Iron Co.*, 50 Mich. 604, 608, 609. Whatever is excluded from the grant by exception remains in the grantor as of his former title or right. *Stockbridge Iron Co.* v. *Hudson Iron Co.*, 107 Mass. 290. The decision in the principal case, in so far as it holds a reservation of minerals valid and susceptible of separate ownership, seems to be in accord with the undoubted weight of authority. The novelty of the decision lies in holding *undiscovered* minerals to be an estate in lands when there is no evidence that there are any minerals in the land. The use of the term *undiscovered* is new. A search of the authorities fails to disclose its use by other courts. The nearest the courts have come to using the term seems to be the statement that "unopened mines" may be conveyed. *Caldwell* v. *Fulton, supra.* See also *Stoughton* v. *Leigh*, 1 Taunt. 402; *Whitfield* v. *Bewit*, 2 P. Wms. 242. However, in these cases it appears that the mines were known to exist, although they had not been opened. Minerals which are "unworked and unsevered" are parts of the freehold and as such constitute landed property or real estate. BAINBRIDGE'S LAW OF MINES AND MINERALS, Ed. 2, p. 3. In *Negaunee Iron Co.* v. *Iron Cliffs Co.*, 134 Mich. 264, 96 N.

W. 468, cited by the court in the principal case there was evidence of the existence of minerals in the land at the time the court held them to be an estate. "There may be two distinct and separate freeholds in the same parcel of land, if it contain minerals, quarries of stone, and the like, the one embracing the surface, the other the mines." 2 WASH. REAL PROP., Ed. 4, p. 375. At least one solution is possible. The use of the term *undiscovered* minerals presupposes the existence of minerals in the land that are susceptible of discovery. To give this construction to the term, however, reads into the case the fact that there were minerals in the land, of which fact the court expressly says there is no evidence. The purpose of the statutory notice is undoubtedly to give all those claiming an interest in the land under the last recorded deed an opportunity to protect their interests. To hold that the holder of the reservation is entitled to notice under the statute on the ground that he is still the "grantee in the last recorded deed" as to minerals is one thing, but to hold that undiscovered minerals constitute an estate in land where there is no evidence of the existence of minerals in the land is another, and was perhaps somewhat beside the point necessary to be decided in the case. However, the principle of the case is important, especially to the Northern Peninsula of Michigan, where many valuable mines and ore deposits have in late years been discovered on lands, the taxes on which have been neglected, but which lands, owing to their location in the so-called mineral belt, had been conveyed in most instances by the patentees, subject to mineral reservations. (BAINBRIDGE'S LAWS OF MINES & MINERALS, p. 4.) The importance of serving notice on the owners of mineral rights under such reservations, whether minerals have been discovered on the lands or not, is shown by the decision in the principal case. Until notice is served upon each part owner, and the statutory proof thereof made and filed, the right to redemption remains to all. *White* v. *Shaw,* 150 Mich. 270, 114 N. W. 210; *Dolph* v. *Norton,* 158 Mich. 417, 123 N. W. 13.

MUNICIPAL CORPORATIONS—LIABILITY OF COUNTY FOR ATTORNEY FEES FOR DEFENDING INDIGENT PERSONS.—Plaintiff brought an action against the defendant county to recover for services rendered by him under an assignment made by the District Court of said county in defending an indigent person charged with murder. His claim had been duly presented to the Board of County Commissioners, and had been disallowed. The Utah statute (C. L. 1907, § 4767), provides for such appointment of counsel for the defense of indigent persons charged with crime; but no provision is anywhere made for any compensation of an attorney for such services. Upon demurrer, the question was presented whether under the circumstances outlined the plaintiff had any claim at all for compensation against the county. *Held,* in the absence of express legislative authority, plaintiff was not entitled to any compensation, and defendant county would have no authority to allow his claim for same. *Pardee* v. *Salt Lake County* (Utah 1911) 118 Pac. 122.

In deciding this case, the court recognizes the line of decisions on both sides of this question, and decides that the weight of reason as well as the great numerical weight of authority is against the allowance of compensation